No. 94-286 (H)

MOTION FILED
SEP 19 1994

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

FREIGHTLINER CORPORATION,
Petitioner,
v.
BEN MYRICK and EMILY MYRICK,
Respondents.[1]

NAVISTAR INTERNATIONAL TRANSPORTATION CORP.,
Petitioner,
v.
JACK LINDSEY, Executor of the Estate and Surviving Spouse of Grace C. Lindsey,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE TRUCK TRAILER MANUFACTURERS ASSOCIATION IN SUPPORT OF PETITIONER

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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14 pp

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Truck Trailer Manufacturers Association hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consent of the attorneys for the petitioner has been obtained. The consent of the attorneys for the respondent was requested but refused.

The interest of the Truck Trailer Manufacturers Association ("TTMA") in this case arises from the fact that its members will be directly and dramatically affected by

the decision of this Court. TTMA is an association composed of truck trailer manufacturers and suppliers throughout the United States as well as in Canada and Europe. Its members manufacture over 90% of the total annual production of truck trailers in the United States—more than 200,000 such trailers each year. These products are the subject of extensive regulation by the National Highway Traffic Safety Administration, which has issued hundreds of regulations governing trailer design, manufacture and performance. These regulations were promulgated pursuant to 15 U.S.C. § 1392, the enabling statute under review in this case. With respect to each such regulation, the issue of federal preemption and the need for consistent rulings throughout the United States are of paramount importance to TTMA members. TTMA submits this brief amicus curiae to address the unsettling effect of the ruling of the Court of Appeals below, as well as its potential impact on regulations other than the anti-lock brake system regulation that is the focus of the petition for writ of certiorari.

Respectfully submitted,

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September 19, 1994

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF AMICUS CURIAE OF THE TRUCK TRAILER MANUFACTURERS ASSOCIATION IN SUPPORT OF PETITIONER

STATEMENT OF INTEREST

The Truck Trailer Manufacturers Association ("TTMA") is an organization whose members include firms engaged in manufacturing large truck or tractor pulled trailers, as well as firms supplying these manufacturers with materials, components or services. TTMA members manufacture over 90% of the total annual pro-

duction in the United States of truck trailers, tank trailers, cargo containers, cargo tanks for trucks, and container chassis. These products are designed for and are used extensively in interstate transportation. They are the subject of detailed regulation by the National Traffic Safety Administration ("NHTSA").

The petition for writ of certiorari filed in this case challenges the ruling by a divided three-judge panel of the United States Court of Appeals for the Eleventh Circuit on the federal preemptive effect that must be given NHTSA regulations. TTMA's members are uniquely interested in the outcome of the petition. This case will determine whether TTMA members can rely on NHTSA safety standards (which they must follow) to ensure national uniformity for interstate transportation, as envisioned by Congress and where NHTSA so specifies, or whether disparate jury verdicts assigning State common law tort liability will be permitted, even where such results conflict directly with NHTSA safety standards.

SUMMARY OF ARGUMENT

NHTSA has found—as a matter of Federal law—that the use of airbrakes without antilock devices is reasonable and safe. Respondents demand that a State common law jury be allowed to find—as a matter of State law—that the use of airbrakes without antilock devices is unreasonable and unsafe. The Supremacy Clause mandates preemption of any such conflicting State law.

ARGUMENT

Congress enacted the National Traffic and Motor Safety Act in 1966 to protect "against unreasonable risk of accidents occurring as a result of the design, construction or performance of motor vehicles and . . . against unreasonable risk of death or injury to persons in the event accidents do occur." 15 U.S.C. § 1391(1). To accomplish this end, the Safety Act authorized the Secretary of Transportation to promulgate federal motor vehicle safety standards having nationwide applicability. Under the Secretary's direction, the National Highway Transportation Safety Administration ("NHTSA") has issued a multitude of such standards governing in detail the design, manufacture and performance of conventional truck and tractor pulled trailers and other special use cargo tanks and trailers.

That these standards were intended to ensure national uniformity where specified by NHTSA is plainly evident in the preemption clause of the enabling statute, Section 1392(d), which provides in part:

> (d) Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard.

15 U.S.C. § 1392(d).

This goal of national uniformity where specified by NHTSA is of particular importance, as the trailers involved in this case, like thousands of similar trailers manufactured by members of TTMA each year, are designed for and in fact are utilized in interstate transportation. To allow the imposition of varying safety standards from

State to State could render the interstate use of these trailers a practical impossibility. Integrated trailer components designed to comply with NHTSA safety standards cannot be altered in the midst of interstate transport. Brake assemblies and other types of safety equipment simply cannot be interchanged at State lines to comply with a multitude of varying liability standards imposed by common law juries having differing inclinations from NHTSA.[1]

Against the unambiguous preemptive command of Section 1392(d) must be compared the savings clause of Section 1397(k), which provides: "Compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from liability under common law." 15 U.S.C. § 1397(k).

[1] The preemption clause of the Safety Act does, under certain circumstances, permit imposition of performance standards that are higher than the otherwise applicable NHTSA standards. However, this permitted variance is limited to vehicles obtained for a government's "own use," 15 U.S.C. § 1392(d), and very few such vehicles are utilized regularly in interstate transportation. This limited exception only reinforces the stated intent of Congress that NHTSA safety standards preempt non-identical State standards for all other vehicles and equipment. The text of the Safety Act simply does not provide that a State may impose higher safety performance standards for all vehicles operated within the State regardless of use or ownership. Such higher standards are permissible only if the applicable NHTSA standards are defined as minimum performance standards, thereby indicating that higher standards imposed by States would not conflict with the Federal standards.

This case however, does not involve a NHTSA safety standard that is defined as a minimum standard. Rather, the NHTSA regulation of antilock brake systems defines their required performance if manufacturers elect to install them on trailers, but the regulation expressly does not require installation of antilock brake systems. *See* 44 Fed. Reg. 46,849 (1979). As will be shown, a State court jury verdict that does require installation of antilock devices in order to avoid common law liability would conflict with the NHTSA regulation. Under Section 1392(d) of the Safety Act, States lack authority to establish and enforce such safety standards.

This provision is entirely consistent with Section 1392(d). The savings clause simply affirms the intent of Congress that the safety standards promulgated by NHTSA not preempt *all* common law claims through implied field preemption.[2] In other words, the mere fact that certain aspects of a trailer's performance are regulated by Federal standards does not mean that State common law claims based on other unregulated aspects of its performance are barred. Rather, those common law claims are expressly preserved by the savings clause. Likewise, common law claims based on an alleged failure to comply with Federal standards—*per se* negligence claims, for example—are not barred. Nor are common law claims based on negligent or defective design or manufacture in implementing Federal safety standards. The savings clause preserves these common law claims as well. Only common law claims predicated on safety standards that conflict with Federal standards applicable to the same aspect of the trailers' performance are barred.

This consistent reading of the preemption clause in Section 1392(d) and the savings clause in Section 1397(k) gives both provisions the logical meaning Congress intended, and it preserves national uniformity on those aspects of performance for which NHTSA has issued safety standards that require uniformity. This reading of the two clauses is also supported by long-standing precedent. In *Pennsylvania R.R. v. Puritan Coal Mining Co.*, 237 U.S. 121, 129-30 (1915), the Court examined a similar savings clause and concluded that it simply

[2] Field preemption is one of three types of preemption long recognized by this Court. It rests on a determination that Congress enacted a "scheme of federal regulation . . . so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it" and therefore the entire field of conduct is governed exclusively by Federal law. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

meant Congress did not intend field preemption. *See also Chicago & North Western Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 328 (1981). The same ruling should adhere in this case.

If the preemption clause and savings clause are not to be read in this consistent manner, but rather are given the interpretation of the two-judge majority of the Eleventh Circuit panel below, then the preemption clause in the final analysis will be meaningless. Common law jury determinations that impose safety standards which conflict with standards promulgated by NHTSA would, applying the decision below, prevail in all cases despite the prohibition contained in the preemption clause against State enforcement of any standard "which is not identical" to the Federal standard. 15 U.S.C. 1392(d). This reading of the Safety Act does *not* give meaning to both the preemption and savings clauses, and instead arrogates to individual State common law juries the power to establish conflicting safety standards.

By contrast, the approach suggested by petitioners and TTMA leaves the responsibility for defining appropriate safety standards with the agency Congress established for that purpose. Under this approach, the safety standards are promulgated by neutral, experienced safety experts following notice and an opportunity for comment by all interested parties, including industry representatives, consumers, and State representatives who may wish to participate. This approach does not favor any of the interested parties, and it ensures nationwide uniformity where appropriate.

In any event, the reasonableness of this approach demonstrates that the interpretation of the preemption and savings clauses by the Court of Appeals below is at least debatable, and for that reason, the text of the Safety Act does not alone provide a "reliable indicium of Congressional intent" such that only express preemption need be examined. *Cipollone v. Liggett Group, Inc.*, 112 S. Ct.

2608, 2618 (1992). Although in the eyes of two of the judges below this requirement "is not much of a hurdle," TTMA submits that, if not entirely consistent in meaning as suggested above, then the preemption clause and savings clause reflect sufficient inconsistency to require consideration of conflict preemption not considered by the Court below. This issue should be fully briefed and argued before this Court.

If the petition in this case is not granted, it will be impossible for TTMA members to rely on NHTSA safety standards, and particularly the brake system regulation at issue in this case. One jury may find that antilock brake systems should have been installed, as the respondents in this case argue. Another jury in another State may conclude that antilock brake systems create greater public danger than airbrakes without antilock devices and should not be installed.[3]

NHTSA regulations cover numerous aspects of trailer design and construction. See, for example, 49 C.F.R. §§ 571.106 (brake hoses), 571.108 (lamps and reflecting devices), 571.119 (pneumatic tires), 571.120 (tire selection and rims), 571.121 (airbrake systems) and 49 C.F.R. §§ 393 Subpart B (lighting devices and reflectors) and Subpart I (cargo securement systems and trailer front-end structure). If State common law juries can impose liability on trailer manufacturers under standards that conflict with NHTSA safety standards such as these, then these NHTSA regulations will have no practical effect and the preemption clause of the Safety Act will be rendered a nullity. If NHTSA requires red reflectors, for

[3] It was precisely the "strong probability that the performance of a substantial number of vehicles whose braking systems had been altered to include . . . antilock devices has created a potentially more hazardous highway situation" which caused the United States Court of Appeals for the Ninth Circuit in *Paccar, Inc. v. National Highway Traffic Safety Admin.*, 573 F.2d 632, 643 (9th Cir.), *cert. denied*, 439 U.S. 862 (1978), to order the suspension of the then mandatory antilock brake regulation.

example, and a jury later finds that blue would have been safer, the manufacturer cannot comply with one rule without violating the other. To avoid liability under State law, the manufacturer must install blue reflectors even though to do so would violate the NHTSA safety standard. If a common law jury in some other State concludes that still another reflector color should have been used, then the manufacturer is further compromised by an inability to satisfy both State laws.

The conflict between Federal and State law is no less direct in this case simply because NHTSA permits manufacturers to choose among antilock and non-antilock brake systems. The respondents' common law claims rest on the allegation that it was unreasonable for the manufacturers not to install antilock brakes. In other words, the respondents must prove and the jury must find, as a matter of State law, that the use of airbrakes without antilock devices was unreasonable. By contrast, the NHTSA safety standard reflects a finding, as a matter of Federal law, that the use of non-antilock airbrakes is a reasonable alternative.

This is the essence of the conflict between State and Federal law in this case. If a jury is allowed to return the finding requested by respondents, then the finding by NHTSA that non-antilock brakes constitute a reasonably safe alternative will be completely negated and the preemption clause of the Safety Act will have no meaning at all.

CONCLUSION

For these reasons, TTMA respectfully submits that the Petition for Writ of Certiorari should be granted in this case.

Respectfully submitted,

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